

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.70 OF 2004

IN

WRIT PETITION NO.290 OF 2003

Shri.Satram Singh

...Petitioner

Versus

Shri V.N.Mathur & Ors.

...Respondents

.....

Mrs.V.V.Thorat for Petitioner.

Mr.Suresh Kumar for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 4, 2006.

P.C.

1. Heard Counsel for the parties. Perused the pleadings.

2. The Petitioner had approached the Central Administrative Tribunal, questioning the action of the Respondent Authorities. The said proceedings were decided in favour of the Petitioner when following operative order came to be passed :

"We therefore, direct the respondents to treat the period spent by the applicant on adhoc promotion till 01.01.1999 as regularised with consequential benefits like eligibility for further promotion and seniority. This exercise shall be completed by the respondents within a period of two months from the date of receipt of copy of this order."

3. The Department carried the matter before this Court by way of Writ Petition being Writ Petition No.290 of 2003. This Court dismissed the Writ Petition and made following observations requiring the Department to take necessary action in terms of the direction of the Tribunal.

"The petition deserves to be dismissed and is accordingly dismissed. It is, however, directed that consequential benefits be given to the respondent within a period of three months from today."

4. The case of the Respondent Department is that as per the direction given by the Tribunal, both the requirements have been substantially complied with, as can be deduced from the communications titled as Memorandum dated 8th October 2003. The Memorandum reads thus :

"MEMORANDUM

Sub : Promotions, Reversions & Transfers
of Gazetted Officers Elect. Dept
Proforma Fixation to Shri. Satram
Singh DEE (C-II) BCT.

Consequent upon the dismissal of the Writ Petition No.290/2003 by the Bombay High Court on 27.3.2003, under which the orders dated 4.10.2002 passed by CAT Mumbai in OA No.192/2002 were challenged by the Railways, the orders dated 4.10.2002 in OA No.192/2002 were complied with regularising the adhoc services of Shri.Satram Singh for the period from the date he took charge of the Group B post of AEE on adhoc basis till 31.12.1998 with all consequential benefits.

Subsequently Shri.Satram Singh is allowed proforma promotion/fixation in Sr Scale (adhoc) in scale Rs.1100-1600 (R)/Rs.3,000-4500 (RP) from 27/2/97 i.e. the date his immediate junior Shri.Abdul Hammed was promoted to Sr.Scale on adhoc basis in the scale of Rs.1100-1600(R)/Rs.3000-4500 (RP) to the date Shri Satram Singh was promoted to the Sr Scale post of DEE (C-II) BCT wef 22-9-03.

Above proforma promotion fixations are given to Shri.Satram Singh as a special case because of implementation of CAT's specific judgment and not be quoted as precedent. He is not entitled for payment arrears for the period actual promotion to Senior scale on adhoc basis.

Necessary payment if any, admissible as per rules may be released and compliance report there to shall be given to DY CPO (G).

This issues with the approval
of Competent Authority.

Sd/-
(RAVINDER KUMAR)
For General Manager (E)"

5. The grievance of the Petitioner in this
Petition, however, is that although the Tribunal as
well as this Court ordered that the Department
shall provide all consequential benefits to the
Petitioner, the Department is not offering payment
of arrears due on fixation of pay in Senior Scale.
This is the limited controversy brought before me.

6. According to the Department, there is no
clear direction to the Department either by the
Tribunal or by this Court to pay arrears due on
fixation of pay in senior scale, whereas, the
consequential benefits have been spelt out by the
Tribunal like eligibility for further promotion and
seniority. If it is so, it was not open to the
Department on its own to offer payment of arrears
due on fixation of pay in senior scale to the
Petitioner. It is contended on behalf of the
Department that in fact the Department has conceded
to the other grievances of the Petitioner which did

not form part of the direction, and the request for payment of arrears cannot be accepted in view of want of clear directions of the Tribunal in that behalf. There is substance in the argument of the Department that the consequential benefits to be provided to the Petitioner have been spelt out by the Tribunal like eligibility of further promotion and seniority and no mention is made regarding payment of arrears due on fixation of pay in senior scale. If it is so, no fault can be found with the department in taking the position that it is not liable to pay the arrears. Suffice it to observe that it is not a case of wilful disobedience of the order passed by the Tribunal or for that matter, this Court.

7. Viewed thus, this action will have to be disposed of with liberty to the Petitioner to take recourse to such remedy as may be permissible by law for claiming payment of arrears due on fixation of pay in senior scale. All questions in that behalf are left open.

A.M.KHANWILKAR, J.